IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 34461 of 2007(C)

IA 3136/07 & 3145/07 in OS.125/2002 of PRL.SUB COURT,KOTTAYAM

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PETITIONER:

MARYKUTTY JOHNSON @ MARYKUTTY
PANDARAKALAM, AGED 51 YEARS, W/O.LATE JOHNSON,
PROPRIETRIX, PANDARAKALAM AGENCIES, ETTUMANOOR,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
SEBASTIAN KURIAN, S/O.KURIAN, PANDARAKALAM,
ATHIRAMPUZHA, KOTTAYAM.

BY ADV. SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY

RESPONDENT:

M/S.MULAMOOTTIL CONSUMER CREDITS LTD.,
SUNNY ESTATE, MAMANGALAM, KOCHI, REPRESENTED
BY POWER OF ATTORNEY HOLDER N.A.THOMAS,
NARIKULAM HOUSE, NEDUNGADU, NAYARAMBALAM P.O.,
ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34461 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Exts.P5 and P7 orders passed by the Subordinate Judge, Kottyam. Ext.P5 is the order passed on Ext.P4 application and Ext.P7 is the order passed on Ext.P6 application. By Ext.P4 application, the defendants in the suit requested the court to give a direction to the plaintiff in the case to produce certain documents which according to them, are absolutely necessary for a proper consideration and disposal of the matter. Ext.P6 is the application whereby there is a specific request to the court to call for the records in O.S.No.24 of 2004 of the Munsiff's Court, Ernakulam, which was disposed of on 21.1.2006. The court below by Ext.P5 order disallowed the prayer for direction to the plaintiff to produce the documents since it was submitted by the plaintiff that it is not in a position to produce the documents called for in the petition as it was filed in another case. As far as Ext.P6 application is concerned, the court

found that it is a highly belated petition and since the documents to be summoned are from a far away court, there is no bonafides and therefore, the petition was dismissed.

2. A perusal of the affidavit would show that the contention raised by the defendants in the suit is that the defendants wanted to project before the court that for the very same relief the plaintiff is prosecuting the suit and therefore until and unless these materials are produced before the court, the court may not be in a position to appreciate the case. It is true that there is delay in filing the application for calling for the documents as well as calling for the production of documents. But when the court finds that there is some force in the contention of the defendants and that the very same documents are relevant for the purpose of determination of the case, the court shall not stand on technicalities and direct the documents to be produced before the court for resolving the controversies between the parties. As per Ext.P5 the court's reasoning is that the plaintiff has stated that he is not in custody of the documents and they were produced in other cases. It may not be possible to produce the documents that are produced in another case. But the court can

direct him to state by filing an affidavit in which case those documents are produced, so as to enable the present writ petitioner to have apply for certified copies of those documents and produce it before the court.

3. So far as the second prayer is concerned, certified copies of the documents can be obtained under Section 240 of Civil Rules of Practice and party should resort to that and it may not be proper for the court to summon the original of the documents unless it is absolutely necessary.

4. Therefore, I set aside the order passed by the court below and direct the court below as follows:

(i) The court shall direct the plaintiff in the suit to file an affidavit to the effect that where he had produced the documents which is sought to be produced by him as per Ext.P5 application.

(ii) The court shall give a reasonable time to the writ petitioner to move the appropriate court for getting certified copies of the documents in O.S.No.24 of 2004 and produce the same before the court.

(iii) In order to enable the party to get copies of the documents, the plaintiff shall be given breathing time and I direct

that the copy of this judgment be produced before the court where the party applies for certified copies and direct that court to issue certified copies out of turn on filing emergent application so that unnecessary protraction of the trial can be averted.

(iv) Needless to say that the final disposal of the suit has to wait till these documents are produced, evidence adduced and counter evidence is permitted to be let in.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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